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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JENS KIRCHER

Appeal 2007-2937
Application 09/806,356¹
Technology Center 2600

Decided: December 31, 2007

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT, and SCOTT R.
BOALICK, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims 18-27 and 29-37, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Application filed March 29, 2001. The real party in interest is Robert Bosch, GmbH.

STATEMENT OF THE CASE

Appellant's invention relates to constructing a data connection between an integrated household control system and a data terminal located outside the base of the integrated household control system. (Spec. 14:1-5.)

Claim 18 is exemplary:

18. A method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, comprising the following steps:

- coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile, and

- controlling the data terminal (11) by the position determining device (14) in such a way that if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, the construction of the data connection with the integrated household control system (1) is automatically initiated via a mobile interface (18) of the data terminal.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Glehr

US 5,723,911

Mar. 3, 1998

Borgstahl	US 5,909,183	Jun. 1, 1999
Joao	US 5,917,405	Jun. 29, 1999
Hoffman	US 6,239,700 B1	May 29, 2001

Claims 18-21, 23, 29-31, and 35-37 stand rejected under 35 U.S.C. § 103(a) as being obvious over Borgstahl and Glehr.

Claims 22, 24, 25, and 32 stand rejected under 35 U.S.C. § 103(a) as being obvious over Borgstahl, Glehr, and Joao.

Claims 26-27 and 33-34 stand rejected under 35 U.S.C. § 103(a) as being obvious over Borgstahl, Glehr, and Hoffman.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R.

§ 41.37(c)(1)(vii).²

² Except as will be noted in this opinion, Appellant has not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether Borgstahl and Glehr teach or suggest controlling a data terminal by a position determining device in such a way that if the distance from a household control base drops to a predetermined limit value or a predetermined region surrounding the household control base is reached, construction of a data connection with the integrated household control system is automatically initiated.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Borgstahl describes an interactive remote controller for appliances in a data communication network. (Col. 1, ll. 15-20.) Each node of the network may establish a "personal area network" by detecting that another node is in a particular proximity and establishing a communication link. (Col. 4, ll. 10-18.) "In other words, only when a first peer 20 resides in the detection zone 28 of a second peer 20 and that second peer 20 resides in the detection zone 28 of the first peer 20, can a connection through network 22 occur. (Col. 5, ll. 11-15; Fig. 1.) The "network 22 uses physical proximity . . . to target a peer 20 with

which a communication is desired." (Col. 5, ll. 17-19.)

2. Figure 6 of Borgstahl teaches that a "task 58 allows a first peer 20 to determine whether a second peer 20 is physically proximate to the first peer 20." (Col. 6, ll. 65-67.) A query task 60 determines whether a "connection-seeking event," which may be triggered in various ways, such as upon the receipt of external information, has occurred and, if so, then task 62 initiates an unsolicited setup connection that will be received by peers 20 within the detection zone 28 of the broadcasting peer. (Col. 7, ll. 17-31.)
3. In an example of appliance personalization, Borgstahl teaches that "certain appliances will always be programmed with a particular user's personalization data whenever that user is near, without requiring action on the user's part." (Col. 7, l. 66 to col. 8, l. 2.)
4. In another example, a "personal device 121 is carried by a user who is approaching, for example, rental car 191, which is equipped with and controlled by a peer analogous to personal devices 121 (FIG. 11), 135 (FIG. 12) or peers 20 (FIG. 1), 21 (FIG. 2)." (Col. 12, ll. 54-58.) Referring to Figure 16, Borgstahl teaches that "[w]hen step 212 determines that personal device 121 is in door range of hardware 135, 21, an acknowledgment signal is sent (block 213) from hardware 135, 21 of car 191 and personal device 121 transmits car keys

(block 214)." (Col. 13, ll. 14-18.)

5. Borgstahl also teaches several other examples, including a personal device coming in range with a telephone (col. 12, ll. 11-49) and a television (col. 13, ll. 34-38).
6. Glehr describes a device for controlling access to a motor vehicle that uses a distance detecting device to measure a distance between a transceiver carried by the user and the motor vehicle. (Abstract; col. 1, ll. 6-7, 31-36, and 60-65.) A transmitting unit broadcasts a question code signal when a tripping device (such as a vehicle door handle) is actuated. (Abstract; col. 1, ll. 36-39, 48-50.) The transceiver checks with the distance detecting device to determine if the vehicle is close enough, and, if so, then it broadcasts an answer code signal. (Col. 3, l. 65 to col. 4, l. 2.) The maximum allowable distance between the transceiver and the vehicle may be determined by the range of the question code signal or by trial and error. (Col. 4, l. 64 to col. 5, l. 3.)

PRINCIPLES OF LAW

All timely filed evidence and properly presented arguments are considered by the Board in resolving an obviousness issue on appeal. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

In the examination of a patent application, the Examiner bears the initial burden of showing a *prima facie* case of unpatentability. *Id.* at 1472. When that burden is met, the burden then shifts to the applicant to rebut. *Id.*;

see also In re Harris, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the *prima facie* case of unpatentability is dissipated. *In re Piasecki*, 745 F.2d at 1472. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [for obviousness] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court reaffirmed that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739. The Court explained that "the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of

ordinary skill in the art would employ." *Id.* at 1741. "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id.* The Court also noted that "[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 1742. "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.*

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

ANALYSIS

Appellant contends that the Examiner erred in rejecting claims 18-27 and 29-37. Reviewing the documents of record and the findings of facts cited above, we do not agree.

With respect to claim 18, Appellant argues that Borgstahl "fails to disclose an if-then condition with respect to the initiating of the data connection" and "does not disclose that the limit value or region is predetermined, because the threshold is random depending on the environment." (Br. 7.) We do not agree.

As the Examiner correctly found, Borgstahl teaches an if-then condition with respect to initiating a data connection by teaching that if a first peer, such as a remote device, is in proximity to a second peer, such as a car, then communication is established. (Ans. 3, 9; FF 1-5.) The Examiner also correctly found that Borgstahl teaches that the limit value or region is predetermined. (Ans. 3-4, 9; FF 1-5.) In addition, Glehr teaches a predetermined limit value or region. (FF 6.)

Appellant also argues that "Glehr does not disclose a position determining device" but rather "discloses a distance detecting device based on the transmit time being measured." (Br. 8.) We note that the plain language of claim 18 requires the recited "position determining device" to control the data terminal "in such a way that if the **distance** from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base" then a data connection will be automatically initiated. In other words, the language of claim 18 requires the position determining device to determine a distance between the data terminal and the household control base. Therefore, we agree with the Examiner that the proximity detection taught by Borgstahl corresponds to position determining and that the distance

detecting device taught by Glehr corresponds to the claimed position determining device. (Ans. 3-4, 9; FF 1-6.)

Finally, Appellant argues that it would not have been obvious to one of ordinary skill in the art to combine Borgstahl and Glehr. (Br. 8.) We disagree. Instead, we agree with the Examiner that it would have been obvious to combine Borgstahl and Glehr because Borgstahl teaches enabling communications between nodes (which correspond to the claimed mobile terminal and household control system) based on proximity and Glehr teaches a distance detecting device to determine when a given node (corresponding to the mobile terminal) is at or within a certain predetermined distance of another node (corresponding to the household control system). (Ans. 4, 9-10.) The teachings of Borgstahl and Glehr are in the same field of endeavor. Indeed, we also note that both Borgstahl and Glehr have explicit teachings related to a vehicle remote control unit (which corresponds to the claimed mobile terminal) and a vehicle (which corresponds to the claimed household control system). (FF 4, 6.) Appellant has done nothing more than combine familiar elements according to known methods to yield predictable results.

Accordingly, we conclude that the Examiner did not err in rejecting claim 18 under 35 U.S.C. § 103(a). No separate arguments in accordance with our rules have been presented for claims 19-27 and 29-37, and therefore these claims fall with claim 18.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 18-27 and 29-37. The rejection of those claims is affirmed.

DECISION

The rejection of claims 18-27 and 29-37 for obviousness under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2007-2937
Application 09/806,356

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